

Members

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Sen. Rose Antich
Rep. Sheila Klinker
Rep. Robert Alderman
Thomas E. Van Meter
Sylvia Brantley
Suda Hopkins
Joanne Rains
Betty Williams
Sally Lowery
Ervin Picha
Christopher Durcholz



INDIANA COMMISSION ON MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

LSA Staff:

Carrie Cloud, Attorney for the Commission
Casey Kline, Attorney for the Commission
Kathy Norris, Fiscal Analyst for the Commission

Authority: P.L. 272-1999

Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Tel: (317) 233-0696 Fax: (317) 232-2554

MEETING MINUTES¹

Meeting Date: October 24, 2001
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 5

Members Present: Sen. Marvin Riegsecker, Chairperson; Sen. Rose Antich; Rep. Sheila Klinker; Thomas E. Van Meter; Sylvia Brantley; Suda Hopkins; Joanne Rains; Sally Lowery; Ervin Picha.

Members Absent: Rep. Robert Alderman; Betty Williams; Christopher Durcholz.

Senator Riegsecker called the meeting to order at 10:20 A.M.

First Steps

Bob Marra, Assistant Superintendent, Indiana Department of Education (DOE), reminded the Commission that DOE is the state agency that administers Part B (i.e., special education for children ages 3 through 21) of the federal Individuals with Disabilities Education Act (IDEA), while the Family and Social Services Administration (FSSA)

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administers Part C (i.e., First Steps). He noted that Parts B and C have similar due process procedures, consisting of three options: (1) complaint investigation by the administering agency; (2) mediation; and (3) due process hearing. Mr. Marra stated that no First Steps cases have been taken to mediation or due process hearings.

Mr. Marra gave the Commission a copy of federal and state regulations concerning the qualifications and responsibilities of a First Steps service coordinator. (Exhibit 1.) He noted that one responsibility of a service coordinator is to continuously seek the appropriate services and situations necessary to benefit the development of a child being served for the duration of the child's eligibility. He commented that the term "appropriate" is key to this particular duty. He also observed that federal regulations allow a service coordinator to be employed or assigned in any way permitted under state law and that Indiana rules allow the parent of a First Steps child to choose the child's service coordinator. Mr. Marra stated that parental choice is a good component of First Steps, but allowing a parent to choose a service coordinator without a system of checks and balances can lead to situations where the parent dismisses a service coordinator who won't approve the services the parent wants his/her child to receive, regardless of the child's actual need for those services, and hires a service coordinator who will approve the services. He cautioned that the lack of a system of checks and balances could also result in some children not being able to access needed services because other children are receiving more services than they actually need. He also commented that because First Steps is a fee-for-service program, there is no motivation for anyone to deny a requested service. This is in contrast to the special education program, where the school system is paid a single fee to provide all services needed by a child regardless of the actual cost of services provided.

Mr. Marra informed the Commission that state policy allows an individual who has a high school diploma or GED certificate or who is a family member of a child with disabilities to be an associate service coordinator. He noted that it could be very difficult for such an individual to disagree with a provider (e.g., a physical or occupational therapist) concerning the services needed by a child. He stated that the definition of "associate service coordinator" had recently been expanded to its current scope due to a need for service coordinators. He cautioned that any restrictions on service coordinator qualifications must be crafted so as to not result in a shortage of service coordinators, but must take into account the need for service coordinators to be able to interpret all relevant information in order to create an appropriate independent family services plan (IFSP) for a child.

Mr. Marra suggested that the Commission recommend that FSSA study issues involving First Steps service coordinators, including qualifications to be a service coordinator and a system of checks and balances between services needed and services provided. Commission members commented that any changes made to the program must preserve a parent's ability to contest an action that the parent believes is contrary to the child's best interests.

Responding to a question, Mr. Marra stated that to become a service coordinator, an individual enrolls with the program's central reimbursement office (CRO), completes a training program, and is placed on a list of approved service coordinators. He noted that service coordinators receive five to eight days of training per year.

Costa Miller, Executive Director, Indiana Association of Rehabilitation Facilities (INARF), stated his support for First Steps but expressed concern over a lack of accountability in the program. He suggested that Commission members access FSSA's web site and look at information there regarding the amounts paid to individual providers. He also reminded the Commission of the debate that occurred in 2000 as the result of an attempt to require accreditation of First Steps providers.

Denise Arland, Chairperson, Interagency Coordinating Council (ICC), referred to a letter that she had written to the Commission regarding a comment made by Tracy Mitchell at the Commission's most recent meeting. (See Exhibit 3.) She explained that after writing the letter, Mr. Mitchell clarified with her that his comment was made regarding the issue of who decides what services a child will receive, not the natural environment issue. Ms. Arland acknowledged that a study of issues surrounding service coordination is an excellent idea and suggested that this study consider data currently being collected by a Maryland institute on four states' First Steps programs, including Indiana's. She noted that many other states are also wrestling with the issues regarding First Steps that have been brought before the Commission. She informed the Commission that Indiana currently requires more training for service coordinators than any other state and that within the past year, the program initiated a second level of training, which includes a test. Responding to a question, Ms. Arland noted that most parents do not perceive the program as overly bureaucratic, but many providers do.

Proposed Legislation

- PD 3439 - - Muscatatuck State Developmental Center (MSDC)

The Commission discussed PD 3439 (Exhibit 2) which prohibits, until January 1, 2005, the relocation of a MSDC resident to an alternative residential setting unless the alternative residential setting is: (1) appropriate based on the individual's capabilities and needs; and (2) acceptable to the individual or the individual's representative. Senator Riegsecker explained that the intent of this draft is to extend the time line for closure of MSDC beyond the current closure date of June 30, 2003.

Marilyn Schultz, Director, Division of Disability, Aging, and Rehabilitation Services (DDARS), FSSA, introduced herself to the Commission, stating that she has held this position for approximately three weeks. She assured the Commission that, as always, DDARS is committed to making sure that individuals served by DDARS are placed in appropriate settings and that there is an adequate quality assurance process in place to ensure that these individuals receive the services they need. She requested that the Commission not recommend the introduction of PD 3439 but instead have DDARS provide the Commission with a report on the status of the MSDC closure process next year and then take any action the Commission deems necessary. Responding to a question, Ms. Schultz acknowledged that as the closure date for an institution approaches, it becomes more difficult to keep the institution properly staffed and provide all necessary services.

Responding to questions, **Steve Cook, Deputy Director, Bureau of Developmental Disabilities Services (BDDS), DDARS**, confirmed that a lawsuit was recently filed to stop the closure of MSDC, but noted that it is really too early in the process to tell what effect, if any, PD 3439 would have if it were to become law. He expressed concern over the possibility that extending the closure date may result in MSDC residents delaying the start of the necessary planning process until there is not enough time to adequately plan for relocation.

Representative Markt L. Lytle, District 69 (Jackson, Jefferson, Jennings), remarked

that comments regarding the expense of continuing to operate MSDC seem to indicate a lack of concern over the best interests of the residents and are therefore offensive to residents, their families, and MSDC employees. He noted that the main problem with having a deadline date for closure is the perception that the facility will be shut down when that date arrives regardless of whether any residents have not been relocated. He reminded the Commission that MSDC's closure will also affect Madison State Hospital (MSH), which is currently being downsized and is slated to serve as the pilot project for a regional services center. He expressed concern over a recent job fair that was to be held for MSH employees but that was later canceled. Commission members echoed his concern over the training and placement of MSDC and MSH employees and were assured by Marilyn Schultz that she would look into this issue.

Representative Lytle reiterated that the biggest problem with the MSDC closure is the fear created by the current deadline and noted that even if the Commission did not recommend the introduction of legislation to address this issue, he would likely introduce legislation himself.

John Dickerson, Executive Director, The ARC of Indiana, expressed support for PD 3439. He suggested that the Commission consider moving the expiration date up one year and requiring DDARS to provide the Commission with regular reports regarding the center's closure. He remarked that DDARS is currently proceeding in an appropriate, person-centered manner in relocating MSDC residents, but that PD 3439 would help to alleviate the fears of residents and their families regarding closure. He commented that the individuals who filed the lawsuit do not necessarily intend to prevent the closure of MSDC, but to make sure that it is done properly.

Commission members expressed concern for the impact that the closure of MSDC will have on employees and the surrounding community and cautioned that the state needs to assist employees in finding alternate employment and to find a viable alternative use for the facility.

Responding to questions, **Dan Mohnke, DDARS consultant**, noted that the time needed to close a state institution varies due to many circumstances. He remarked that the closure of New Castle State Developmental Center took a few months longer than planned, but the closure of Northern Indiana State Developmental Center was completed ahead of schedule. He stated that the current closure date for MSDC, while aggressive, is achievable. He stated that although it would be preferable not to have any MSDC residents relocated to nursing homes, in some cases, that may be the best option available.

Representative Cleo Duncan, District 67 (Decatur, Ripley, Switzerland), stated that PD 3439 should go a long way in reassuring the families of MSDC residents. She expressed concern over whether the regional services center will include a facility to provide 24-hour care for those individuals who need it.

Costa Miller, Executive Director, INARF, stated that FSSA is working very hard to meet the needs of all MSDC residents during the closure process. He noted that there are several options that could be implemented to increase the availability of community services for individuals with developmental disabilities and mental illness. He stated that the values expressed by PD 3439 were a positive step but suggested that the Commission instead recommend the introduction of a joint resolution explaining how the decision to close MSDC was made and the process that will be used for the closure.

Steve Cook, Deputy Director, BDDS, explained that rules are being adopted to allow the formation of four-bed group homes with 24-hour nursing care. FSSA expects that these facilities will be able to open in July of 2002 to serve medically fragile individuals and

individuals with behavioral issues. Mr. Cook noted that the new developmental disabilities (DD) Medicaid waiver includes reimbursement for health care management, case management, and transportation. He stated that about one-half of the 37 individuals who have moved out of MSDC since the closure was announced have been placed in group homes, with the other half moving to supported living settings. DDARS continues to monitor these individuals in their new settings to make sure they are receiving the services they need.

The Commission agreed to amend PD 3439 as follows: (1) change the expiration date to January 1, 2004; and (2) require DDARS to provide the Commission with quarterly reports regarding the status of the closure of MSDC beginning March 1, 2002. Senator Riegsecker commented that the Commission should review the expiration date next interim.

Upon a proper motion and second, the Commission voted to approve PD 3439, as amended, by a vote of 8-0.

- PD 3440 - - Accreditation of disabilities services providers

The Commission discussed PD 3440 (Exhibit 4) which requires BDDS, when contracting for the provision of services to individuals with disabilities, to contract with governmental units and other public or private organizations or individuals that are accredited by certain organizations.

Commission member Erv Picha explained that current law requires providers of services under BDDS programs to be accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF). In the 2001 legislative session, a bill was passed allowing providers of vocational rehabilitation services, who were also previously required to be accredited by CARF, to be accredited by other organizations as well. He stated that PD 3440 would allow BDDS services providers the same choice for accreditation.

Staff counsel indicated that the PD as drafted applies the accreditation requirement to all BDDS service providers. However, **Steve Cook, Deputy Director, BDDS**, and **Costa Miller, Executive Director, INARF**, stated that the current accreditation requirement applies only to community mental retardation and other developmental disabilities centers and that the PD would merely allow those providers to use a different accreditation entity.

Upon a proper motion and second, the Commission voted to approve PD 3440 by a vote of 8-0.

- PD 3438 - - MRDD Commission

The Commission discussed PD 3438 (Exhibit 5) which changes the Commission from a noncode to a statutory commission, making the following changes: (1) specifies that the term of a lay member is three years; (2) requires the Governor to fill a lay member vacancy within 10 days after the vacancy occurs; and (3) provides that under certain conditions the term of a lay member continues until a successor is appointed. The PD also provides that the Commission operates under the policies governing study committees adopted by the Legislative Council, repeals noncode provisions establishing the Commission and its duties, and "grandfathers" current lay members until the expiration of their terms in 2004.

Upon a proper motion and second, the Commission voted to approve PD 3438 by a vote of 8-0.

Consideration of Final Report

By a vote of 8-0, the Commission voted to approve the draft final report (Exhibit 6) with the following amendments:

- Include the following recommendation: "The Commission urges FSSA to work with all interested parties to study the issues surrounding the implementation of a system of checks and balances between services needed by a child in the First Steps program and the services authorized."
- Clarify that the \$2,800 per child cost for First Steps represents only the cost of direct services, not administrative or other program costs.
- Revise as necessary to reflect testimony received and action taken at today's meeting.

There being no further business to come before the Commission, Senator Riegsecker adjourned the meeting at 12:30 P.M.